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PATENT & TRADEMARK OFFICE

Our Reference: AMI-158-B PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Karl Van Blankenburg & Edward J. Belfour
Serial Number:	09/923,694
Filing Date:	August 7, 2001
Examiner/Art Group Unit:	Phan, Hau Van/3618
Title:	GOALIE SKATE PROTECTIVE SHELL WITH REMOVABLE BLADE

CERTIFICATE OF MAILING AND TRANSMITTAL LETTER

Mail Stop Appeal Brief - Patent
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted with this document is a Postcard; Appeal Brief (in triplicate); Appendices A, B and C; and a check in the amount of $165.00 in the above-identified application.

X A check in the amount of $165.00 is attached.

X Please charge any deficiency or credit any excess in the enclosed fees to Deposit Account Number 25-0115.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on **July 12, 2004**.

William M. Hanlon, Jr.
Attorney for Applicant
Registration No. 28422
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Troy, MI 48084-3107

AF 3618 # IFW

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APPEAL BRIEF

Mail Stop Appeal Brief - Patent
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Please enter the following Appeal Brief in the appeal filed May 11, 2004.

REAL PARTY IN INTEREST

The inventors, Karl Van Blankenburg and Edward J. Belfour, are the real parties in interest.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-8 and 16-20 are pending. Claims 9-15, 21, and 22 are withdrawn as being non-elected. No claim has been allowed. This appeal is from the fourth rejection of claims 1-8 and 16-20.

STATUS OF AMENDMENTS

No Amendment has been filed to the fourth Office Action dated April 2, 2004.

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SUMMARY OF THE INVENTION

An attachment for a goalie skate for receiving a goalie ice skate boot includes a protective shell (12, page 3, paragraphs 16-20, Figs. 1 and 2) for a boot (12, Fig. 2) having opposed sidewalls and a sole (18, paragraph 19, Fig. 1) joined by toe and heel portions (24, 26, paragraph 17, Figs. 1 and 2). A holder (32, paragraph 20, Fig. 2) is unitarily formed as part of the sole (18) of the shell (12). The holder (32) has an open ended groove (50, paragraph 21, Fig. 2) extending lengthwise thereover. At least two transversely extending bores (42, paragraph 20, Figs. 1 and 2) are formed in the holder (32). A blade (14, paragraphs 24-27, Figs. 1-3) has a blade edge (64, paragraph 24) and at least two legs (78, 82, paragraph 25, Figs. 1 and 2) projecting from the blade (14). Apertures (92, 94, paragraph 27, Fig. 1) are formed in the legs (78,82) for alignment with the transverse extending bores (42) in the holder (32) when the blade (14) is mounted in the open ended groove (50) in the holder (32). Fasteners (44, 46, paragraph 27, Fig. 1) are engagable through the apertures (92, 94) in legs (78, 82) of the blade (14) and the transversely extending bores (42) in the holder (50) to removable affix the blade (14) to the holder (50).

The present goalie skate protective shell (12) with removable blade (14) overcomes deficiencies found in previous goalie ice skate protective shells. The holder (50) which is integrally formed as a unitary part of the protective shell (12) removably receives an ice skate blade (14) which uniquely enables the blade (14) to be removed for replacement, sharpening, etc. This makes the protective shell (12) of the present invention easier to use than previously devised goalie skate protective shells.

ISSUES ON APPEAL

The separate issues on appeal are:

1. Whether claims 1-8 and 16-20 are obvious and unpatentable under 35 U.S.C. § 103 (a) over Graf in view of Reynolds.

2. Whether claims 1-8 and 16-20 are obvious and unpatentable under 35 U.S.C. § 103 (a) over Brown in view of Reynolds.

GROUPING OF CLAIMS

The claims do **not** stand or fall together. Claims 1-8 are separately patentable from all other claims. Claims 16-20 are separately patentable from all other claims. The specific reasons for the separate patentability of claims 1-8 and 16-20 are set forth in the attached Argument.

ARGUMENT

Claims 1-8 over Graf in view of Reynolds

It is respectfully submitted that the rejection of Appellants' invention as set forth in claims 1-8 is in error. It is also submitted that the Examiner has not established a *prima facie* case of obviousness to support the rejection raised in the Office Action.

The Examiner contends that Graf discloses all of the features of Appellants' invention including, among other features, a holder having an open-ended groove and a blade received in the open-ended groove after the holder has been unitarily formed with the shell. The Examiner notes that Graf fails to show at least two transversely extending bores formed in the holder, apertures formed in the legs

and fasteners engagable though the apertures in the legs of the blade and the bores in the holder to removably affix the blade to the holder.

The Examiner cites Reynolds for showing an ice skate having a holder, a blade and fasteners. The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate and getting aid for such a skate boot of Graf with the ice skate chassis having at least two transverse bores, apertures and fasteners as taught by Reynolds in order to increase the force opposing deformation of the blade given by the transverse force.

The Examiner also contends in the Office Action that Graf does not disclose the method of making a skate boot and how to insert the blade to the blade holder.

It is respectfully submitted that the Examiner has ignored or not given sufficient consideration and weight to one of the Appellants' assertions in paragraphs 3 and 4 of the previously submitted 1.132 Declaration, a copy of which is provided herein in Appendix C. While the Appellants agree with the Examiner that Graf does not explicitly discribe the method of mounting the blade in the skate boot shell, Appellants' Declaration, based on Appellants extensive plastic molding experience, establishes that one of ordinary skill in the art, i.e., the Appellant in this case, would be able to derive from the drawings of Graf that the only process capable of mounting the blade in the holder portion of the shell is through an insert molded process wherein the skate blade is supported in a mold and then the plastic injected into the mold and around and through a portion of the blade to form the shell and holder. An aperture in an intermediate flange on the blade and notches formed by reverse curled

arms on opposite ends of the blade allow plastic to flow through and around portions of the blade to irremovably affix the blade in the shell and holder.

It is respectfully submitted that Appellants' 1.132 Declaration fully supports this interpretation and cannot be simply ignored by the Examiner.

Thus, based on the clear interpretation of the method of forming the Graf patent as evident from the drawings of Graf in Appellants' Declaration, Graf is devoid of any teaching or suggestion of removably affixing the blade in the holder portion of the integral holder/shell as set forth by the Appellants' goalie ice skate attachment defined in Claim 1.

Due to the insert molding process required to integrally mount the blade in the holder, Graf never forms an open-ended groove in the holder after the holder has been unitarily formed with the shell which is capable of receiving a blade fixable in the groove by fasteners. Graf is specific to an irremovable blade unitarily mounted by insert molded plastic to the holder portion of the shell. Any feature that could function as a groove is formed around the blade so that the blade is not attached after the holder is formed as in Appellants' invention.

Reynolds shows a conventional ice skate blade holder in which the blade holder, typically formed of molded plastic, is secured to the sole of an ice skate by means of rivets. The blade in Reynolds is removably mounted in the holder by means of transversely extending fasteners which are mountable through aligned apertures in the holder and the blade.

However, the holder and removably blade of Reynolds is intended for use solely in a conventional ice skate and not a goalie skate attachment wherein a

shell, holder and blade receive a slide-in ice skate boot. Reynolds lacks any shell capable of surrounding the boot and is, instead, fixedly secured to the bottom surface or sole of an ice skate boot by rivets.

For these reasons, it is respectfully submitted that since Graf teaches a blade unitarily and irremovably mounted in a goalie ice skate shell/holder body by means of an insert molded process as clearly established by Appellants' Declaration, it is respectfully submitted that one of ordinary skill in the art would not be led to combine the removable blade mountable in a holder separately affixed to the sole of an ice skate boot of Reynolds with the goalie ice skate shell/holder of Graf.

Further, Appellants' Declaration, contrary to the Examiner's assertions in the Office Action that it includes opinion evidence praising the merits of the claimed invention which was found to have little value because of a lack of factual support, instead discusses the complex molding process required to form Appellants' attachment as defined in claims 1-8, see paragraphs 7-10 of Appellants' Declaration, a copy of which is included in Appendix C.

For the above reasons, it is respectfully submitted that Appellants' invention as set forth in claims 1-8 includes features which are not suggested or rendered obvious by any permissible combination of Graf and Reynolds. It is further submitted that the Examiner has not established a *prima facie* case of obviousness to support a rejection of Appellants' invention set forth in claims 1-8 by a purported combination of the teachings of Graf and Reynolds.

Claims 16-20 over Graf in view of Reynolds

It is respectfully submitted that the rejection of Appellants' invention as set forth in claims 16-20 is in error. It is also submitted that the Examiner has not established a *prima facie* case of obviousness to support the rejection raised in the Office Action.

The Examiner contends that Graf discloses all of the features of Appellants' invention including, among other features, a holder having an open-ended groove and a blade received in the open-ended groove after the holder has been unitarily formed with the shell. The Examiner notes that Graf fails to show at least two transversely extending bores formed in the holder, apertures formed in the legs and fasteners engagable though the apertures in the legs of the blade and the bores in the holder to removably affix the blade to the holder.

The Examiner cites Reynolds for showing an ice skate having a holder, a blade and fasteners. The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate and getting aid for such a skate boot of Graf with the ice skate chassis having at least two transverse bores, apertures and fasteners as taught by Reynolds in order to increase the force opposing deformation of the blade given by the transverse force.

The Examiner also contends in the Office Action that Graf does not disclose the method of making a skate boot and how to insert the blade to the blade holder.

It is respectfully submitted that the Examiner has ignored or not given sufficient consideration and weight to one of the Appellants' assertions in paragraphs

3 and 4 of the previously submitted 1.132 Declaration, a copy of which is provided herein in Appendix C. While the Appellants agree with the Examiner that Graf does not explicitly describe the method of mounting the blade in the skate boot shell, Appellants' Declaration, based on Appellants extensive plastic molding experience, establishes that one of ordinary skill in the art, i.e., the Appellant in this case, would be able to derive from the drawings of Graf that the only process capable of mounting the blade in the holder portion of the shell is through an insert molded process wherein the skate blade is supported in a mold and then the plastic injected into the mold and around and through a portion of the blade to form the shell and holder. An aperture in an intermediate flange on the blade and notches formed by reverse curled arms on opposite ends of the blade allow plastic to flow through and around portions of the blade to irremovably affix the blade in the shell and holder.

It is respectfully submitted that Appellants' 1.132 Declaration fully supports this interpretation and cannot be simply ignored by the Examiner.

Thus, based on the clear interpretation of the method of forming the Graf patent as evident from the drawings of Graf in Appellants' Declaration, Graf is devoid of any teaching or suggestion of removably affixing the blade in the holder portion of the integral holder/shell as set forth by the Appellants' goalie ice skate attachment defined in Claim 16.

Due to the insert molding process required to integrally mount the blade in the holder, Graf never forms an open-ended groove in the holder after the holder has been unitarily formed with the shell which is capable of receiving a blade fixable in the groove by fasteners. Graf is specific to an irremovable blade unitarily mounted by

insert molded plastic to the holder portion of the shell. Any feature that could function as a groove is formed around the blade so that the blade is not attached after the holder is formed as in Appellants' invention.

Reynolds shows a conventional ice skate blade holder in which the blade holder, typically formed of molded plastic, is secured to the sole of an ice skate by means of rivets. The blade in Reynolds is removably mounted in the holder by means of transversely extending fasteners which are mountable through aligned apertures in the holder and the blade.

However, the holder and removably blade of Reynolds is intended for use solely in a conventional ice skate and not a goalie skate attachment wherein a shell, holder and blade receive a slide-in ice skate boot. Reynolds lacks any shell capable of surrounding the boot and is, instead, fixedly secured to the bottom surface or sole of an ice skate boot by rivets.

For these reasons, it is respectfully submitted that since Graf teaches a blade unitarily and irremovably mounted in a goalie ice skate shell/holder body by means of an insert molded process as clearly established by Appellants' Declaration, it is respectfully submitted that one of ordinary skill in the art would not be led to combine the removable blade mountable in a holder separately affixed to the sole of an ice skate boot of Reynolds with the goalie ice skate shell/holder of Graf.

Further, Appellants' Declaration, contrary to the Examiner's assertions in the Office Action that it includes opinion evidence praising the merits of the claimed invention which was found to have little value because of a lack of factual support, instead discusses the complex molding process required to form Appellants'

attachment as defined in claims 16-20, see paragraphs 7-10 of Appellants' Declaration, a copy of which is included in Appendix C.

For the above reasons, it is respectfully submitted that Appellants' invention as set forth in claims 1-8 includes features which are not suggested or rendered obvious by any permissible combination of Graf and Reynolds. It is further submitted that the Examiner has not established a *prima facie* case of obviousness to support a rejection of Appellants' invention set forth in claims 16-20 by a purported combination of the teachings of Graf and Reynolds.

Claims 1-8 over Brown in view of Reynolds

It is respectfully submitted that the rejection of Appellants' invention as set forth in claims 1-8 is in error. Specifically, it is submitted that the Examiner has not established a *prima facie* case of obviousness to support the rejection raised in the Office Action.

The Examiner cites Figs. 14 and 15 of Brown as disclosing a protective shell for a skate boot which has a unitary holder and an open ended groove after the holder has been unitarily formed with respect to the shell which is adapted for receiving a blade.

Brown, like Graf, is devoid of any specific mention of the mounting process used to mount the blade in the holder. However, it is evident from the drawings of Brown that Brown is devoid of any teaching or suggestion of removably mounting the blade in the holder by the use of separate fasteners engagable with portions of the blade and portions of the holder. Thus, one of ordinary skill in the art

would not be led by the teachings of Brown to describe that Brown has a removable blade.

Thus, Appellants' Declaration asserting that an insert molding process is the only way for Graf to mount the blade and holder in the holder applies equally to Brown. While Brown describes a slot formed in the holder for receiving the blade, since Brown is devoid of a separate teaching of removably mounting the blade in the holder after the holder and shell have been integrally formed, it is respectfully submitted that one of ordinary skill in the art would be led by Brown to form the blade, the holder and the shell in a one step insert molding process.

The Examiner cites Reynolds for showing an ice skate having a holder, a blade and fasteners.

The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate and getting aid for such a skate boot of Brown with the ice skate chassis having at least two transverse bores, apertures and fasteners as taught by Reynolds in order to increase the force opposing deformation of the blade given by the transverse force.

It is respectfully submitted that the Examiner has ignored or not given sufficient consideration and weight to Appellants' statements in the previously submitted 1.132 Declaration, a copy of which is provided herein in Appendix C. While Brown does not explicitly disclose the method of mounting the blade in the skate boot shell, Appellants' Declaration, based on Appellants extensive plastic molding experience, shows that one of ordinary skill in the art, the Appellant in this case, would be able to derive from the drawings of Brown that the only process

capable of mounting the blade in the holder portion of the shell is an insert molded process wherein the skate blade is supported in a mold and then the plastic injected into the mold and around a portion of the blade to form the shell and holder. An aperture in an intermediate flange on the blade and notches formed by inward extending arms on opposite ends of the blade allow plastic to flow through and around portions of the blade to irremovably affix the blade in the shell and holder.

It is respectfully submitted that Appellants' 1.132 Declaration fully supports this interpretation and cannot be simply ignored by the Examiner.

Thus, based on the clear interpretation of the method of forming the Brown patent as evident from the drawings of Brown is supported by Appellants' Declaration, Brown is devoid of any teaching or suggestion of removably affixing the blade in the holder portion of the integral holder/shell as set forth by the Appellants' goalie ice skate attachment defined in Claim 1.

Due to the insert molding process required to integrally mount the blade in the holder, Brown never forms an open-ended groove in the holder after the holder has been unitarily formed with the shell which is capable of receiving a blade fixable in the groove by fasteners. Brown is specific to an irremovable blade unitarily mounted by insert molded plastic to the holder portion of the shell.

Reynolds shows a conventional ice skate blade holder in which the blade holder, typically formed of molded plastic, is secured to the sole of an ice skate by means of rivets or other fasteners. The blade in Reynolds is removably mounted in the holder by means of transversely extending fasteners which are mountable through aligned apertures in the holder and the blade.

However, the holder and removably blade of Reynolds is intended for use solely in a conventional ice skate and not a goalie skate attachment wherein a shell, holder and blade receive a slide-in ice skate boot. Reynolds lacks any shell capable of surrounding the boot and is, in stead, fixedly secured to the bottom surface or sole of an ice skate boot by rivets.

For these reasons, it is respectfully submitted that since Brown teaches a blade integrally and unitarily mounted in a goalie ice skate shell/holder body by means of an insert molded process as clearly established by Appellants Declaration, it is respectfully submitted that one of ordinary skill in the art would not be led to combine the removable blade mountable in a holder separately affixed to the sole of an ice skate boot of Reynolds and the goalie ice skate shell/holder of Brown.

Further, Appellants' Declaration, contrary to the Examiner's assertions in the Office Action that the Declaration includes opinion evidence praising the merits of the claimed invention which was found to have little value because of a lack of factual support, instead discusses the complex molding process required to form Appellants attachment as defined in claims 1-8, see paragraphs 7-10 of Appellants' Declaration, a copy of which is included in Appendix C.

In conclusion, for the above reasons, it is respectfully submitted that Appellants' invention as set forth in claims 1-8 includes features which are not anticipated or rendered obvious by any permissible combination of Graf and Reynolds. It is further submitted that the Examiner has not established a *prima facie* case of obviousness to support a rejection of Appellants' invention set forth in claims 1-8 by a purported combination of the teachings of Graf and Reynolds.

Claims 16-20 over Brown in view of Reynolds

It is respectfully submitted that the rejection of Appellants' invention as set forth in claims 16-20 is in error. Specifically, it is submitted that the Examiner has not established a *prima facie* case of obviousness to support the rejection raised in the Office Action.

The Examiner cites Figs 14 and 15 of Brown as disclosing a protective shell for a skate boot which has a unitary holder and an open ended groove after the holder has been unitarily formed with respect to the shell which is adapted for receiving a blade.

Brown, like Graf, is devoid of any specific mention of the mounting process used to mount the blade in the holder. However, it is evident from the drawings of Brown that Brown is devoid of any teaching or suggestion of removably mounting the blade in the holder by the use of separate fasteners engagable with portions of the blade and portions of the holder. Thus, one of ordinary skill in the art would not be led by the teachings of Brown to determine that Brown has a removable blade.

Thus, Appellants' Declaration asserting that an insert molding process is the only way for Graf to mount the blade and holder in the holder applies equally to Brown. While Brown discloses a slot formed in the holder for receiving the blade, since Brown is devoid of a separate teaching of removably mounting the blade in the holder after the holder and shell have been integrally formed, it is respectfully submitted that one of ordinary skill in the art would be led by Brown to form the blade, holder and shell in a one step insert molding process.

The Examiner cites Reynolds for showing an ice skate having a holder, a blade and fasteners.

The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate and getting aid for such a skate boot of Brown with the ice skate chassis having at least two transverse bores, apertures and fasteners as taught by Reynolds in order to increase the force opposing deformation of the blade given by the transverse force.

The Examiner also contends in the Office Action that Brown does not disclose the method of making a skate boot and how to insert the blade to the blade holder.

It is respectfully submitted that the Examiner has ignored or not given sufficient consideration and weight to one of the Appellants' statements in the previously submitted 1.132 Declaration, a copy of which is provided herein in Appendix C. While the Appellants' agree with the Examiner that Brown does not explicitly disclose the method of mounting the blade in the skate boot shell, Appellants' Declaration, based on Appellants extensive plastic molding experience, shows that one of ordinary skill in the art, the Appellant in this case, would be able to derive from the drawings of Brown that the only process for mounting the blade in the holder portion of the shell is through an insert molded process wherein the skate blade is supported in a mold and then the plastic injected into the mold and around a portion of the blade to form the shell and holder. Aperture in an intermediate flange on the blade and notches formed by inward extending arms on opposite ends of the blade

allow plastic to flow through and around portions of the blade to irremovably affix the blade in the shell and holder.

It is respectfully submitted that Appellants' 1.132 Declaration fully supports this interpretation and cannot be simply ignored by the Examiner.

Thus, based on the clear interpretation of the method of forming the Brown patent as evident from the drawings of Brown raf as supported by Appellants' Declaration, Brown is devoid of any teaching or suggestion of removably affixing the blade in the holder portion of the integral holder/shell as set forth by the Appellants' goalie ice skate attachment defined in Claim 16-20.

Due to the insert molding process required to integrally mount the blade in the holder, Brown never forms an open-ended groove in the holder after the holder has been unitarily formed with the shell which is capable of receiving a blade fixable in the groove by fasteners. Brown is specific to an irremovable blade unitarily mounted by insert molded plastic to the holder portion of the shell.

Reynolds shows a conventional ice skate blade holder in which the blade holder, typically formed of molded plastic, is secured to the sole of an ice skate by means of rivets or other fasteners. The blade in Reynolds is removably mounted in the holder by means of transversely extending fasteners which are mountable through aligned apertures in the holder and the blade.

However, the holder and removably blade of Reynolds is intended for use solely in a conventional ice skate and not a goalie skate attachment wherein a shell, holder and blade receive a slide-in ice skate boot. Reynolds lacks any shell

capable of surrounding the boot and is, in stead, fixedly secured to the bottom surface or sole of an ice skate boot by rivets.

For these reasons, it is respectfully submitted that since Brown teaches a blade integrally and unitarily mounted in a goalie ice skate shell/holder body by means of an insert molded process as clearly established by Appellants Declaration, it is respectfully submitted that one of ordinary skill in the art would not be led to combine the removable blade mountable in a holder separately affixed to the sole of an ice skate boot of Reynolds and the goalie ice skate shell/holder of Brown.

Further, Appellants' Declaration, contrary to the Examiner's assertions in the Office Action that the Declaration includes opinion evidence praising the merits of the claimed invention which was found to have little value because of a lack of factual support, instead discusses the complex molding process required to form Appellants attachment as defined in claims 16-20, see paragraphs 7-10 of Appellants' Declaration, a copy of which is included in Appendix C.

In conclusion, for the above reasons, it is respectfully submitted that Appellants' invention as set forth in claims 16-20 includes features which are not suggested or rendered obvious by any permissible combination of Brown and Reynolds. It is further submitted that the Examiner has not established a *prima facie* case of obviousness to support a rejection of Appellants' invention set forth in claims 16-20 by a purported combination of the teachings of Brown and Reynolds.

CONCLUSION

For the reasons stated above, it is respectfully submitted that Appellant's invention as defined in claims 1-8 and 16-20 patentably defines over the cited references, and is not suggested or rendered obvious thereby. As such, it is respectfully submitted that the Examiner's rejection of claims 1-8 and 16-20 is erroneously based and its reversal is respectfully requested. Upon allowance , re-entry of withdrawn claims 9-15, 21 and 22 through linking claim 22 is requested.

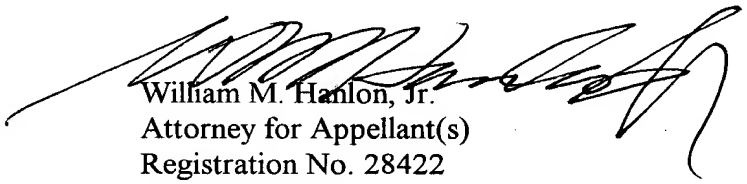
No oral hearing is requested.

Appellants' attorney's check in the amount of $165.00 is enclosed to cover the Appeal Brief filing fee.

This Appeal Brief, including Appendices A, B, and C, is being filed in triplicate including one original and two copies.

Respectfully submitted,

YOUNG, BASILE, HANLON,
MacFARLANE, WOOD & HELMHOLDT, P.C.



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Dated: July 12, 2004
WMH/grl/jo

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APPENDIX A
CLAIMS AT ISSUE IN APPEAL

1. An attachment to a goalie ice skate comprising:

a protective shell having first and second opposed side walls and a sole joined by toe and heel portions, the shell defining an interior cavity adapted for receiving a goalie ice skate boot;

a holder unitarily formed as part of the sole of the shell, the holder having an open ended groove extending lengthwise thereover;

at least two transversely extending bores formed in the holder;

a blade received in the open ended groove after the holder has been unitarily formed with respect to the shell, the blade having a blade edge and at least two legs projecting from the blade edge, apertures formed in the legs for alignment with a corresponding number of bores formed in the holder when the blade is mounted in the open ended groove in the holder; and

fasteners engagable through the apertures in the legs of the blade and the bores in the holder to removably affix the blade to the holder.

2. The attachment to a goalie ice skate according to claim 1 wherein the open ended groove is integrally formed with respect to the toe and heel portions and releasibly engages the blade.

3. The attachment to a goalie ice skate according to claim 1 wherein the corresponding number of bores are integrally formed with respect to the toe and heel portions.

4. The attachment to a goalie ice skate according to claim 1 further comprising:

at least one lateral support defined by a mounting edge of the blade; and

at least one slot for receiving the at least one lateral support defined by the holder.

5. The attachment to a goalie ice skate according to claim 4 wherein the at least one slot is integrally formed with respect to the toe and heel portions.

6. The attachment to a goalie ice skate according to claim 1 wherein the first opposed side wall defines a low profile in at least a central portion of the skate and the corresponding number of bores are integrally formed with respect to the low profile of the first opposed side wall.

7. The attachment to a goalie ice skate according to claim 1 wherein the second opposed side wall defines an ankle portion rising above an upper extent of the heel portion and the corresponding number of bores are integrally formed with respect to the ankle portion of the second opposed side wall.

8. The attachment to a goalie ice skate according to claim 1 wherein at least one of the apertures formed in the legs is offset from a substantially longitudinal axis of the corresponding leg.

9. (Withdrawn) A method for making an attachment to a goalie skate comprising the steps of:

forming a sole having a first end and a second end;

integrally forming a protective shell with respect to the sole for receiving a goalie ice skate boot including a toe portion adjacent a first end of the sole and a heel portion adjacent the second end, and

integrally forming a blade holder with respect to the sole and the protective shell including an open ended groove for receiving a blade subsequent to

being formed with sole and the protective shell, the blade holder also including at least one bore extending transverse to the open ended groove and adjacent one of the toe portion and the heel portion to receive a fastener for releasibly associating a blade with respect to the integrally formed sole, protective shell and blade holder; and

positioning the blade in the open ended groove after the protective shell has been unitarily formed.

10. (Withdrawn) The method according to claim 9 wherein the step of integrally forming the protective shell further comprises the steps of:

forming a first opposed side wall extending between the toe portion and the heel portion; and

defining a low profile in at least a central portion of the first opposed side wall.

11. (Withdrawn) The method according to claim 9 wherein the step of integrally forming the protective shell further comprises the steps of:

forming a second opposed side wall extending between the toe portion and the heel portion; and

defining an ankle portion rising above an upper extent of the heel portion.

12. (Withdrawn) The method according to claim 9 wherein the step of integrally forming the blade holder further comprises the steps of:

forming at least one slot extending transverse to the open ended groove and adjacent one of the toe portion and the heel portion to receive a fastener for releasibly associating the blade with respect to the unitarily formed sole, protective shell and blade holder.

13. (Withdrawn) The method according to claim 12 wherein the step of forming at least one slot further comprises the steps of:

forming a first slot in the open ended groove adjacent the toe portion of the protective shell extending toward the heel portion.

14. (Withdrawn) The method according to claim 13 wherein the step of forming at least one slot further comprises the steps of:

forming a second slot in the open ended groove adjacent the heel portion of the protective shell extending toward the toe portion.

15. (Withdrawn) The method according to claim 9 further comprising the step of:

positioning a blade with respect to the open ended groove after the forming step.

16. An attachment to a goalie ice skate comprising:

a sole having a first end and a second end;

a protective shell integrally formed with respect to the sole for receiving a goalie ice skate boot including a toe portion adjacent a first end of the sole and a heel portion adjacent a second end of the sole, the protective shell extending in a first direction from the sole; and

a blade holder integrally formed with respect to the sole and the protective shell including an open ended groove for receiving a blade subsequent to being formed with sole and the protective shell, the blade holder also including at least one bore extending transverse to the open ended groove and adjacent one of the toe portion and the heel portion to receive a fastener for releasibly associating a blade with respect to the integrally formed sole, protective shell and blade holder.

17. The attachment to a goalie ice skate according to claim 16 wherein the at least one bore further comprises:

a first bore adjacent the toe portion, the sole disposed between and unitarily formed with the first bore and the toe portion; and

a second portion adjacent the heel portion, the sole disposed between and unitarily formed with the second bore and the heel portion.

18. The attachment to a goalie ice skate according to claim 16 further comprising:

a first opposed side wall extending between the toe portion and the heel portion and defining a low profile in at least a central portion of the first opposed side wall; and

a second opposed side wall extending between the toe portion and the heel portion and defining an ankle portion rising above an upper extent of the heel portion.

19. The attachment to a goalie ice skate according to claim 16 further comprising:

at least one slot defined in the open ended groove and extending along a longitudinal axis of the sole to receive a lateral support defined by a blade received in the open ended groove.

20. The attachment to a goalie ice skate according to claim 16 further comprising:

a blade receivable with respect to the open ended groove including a blade portion and first and second legs extending substantially transverse to the blade portion, the first leg defining a first projection extending substantially parallel to the blade portion and toward the second leg, the second leg defining a second projection extending substantially parallel to the blade portion and toward the first leg.

21. (Withdrawn) The method according to claim 9 wherein the forming step further comprises the step of:

molding the protective shell and the holder in a plastic molding process.

22. (Withdrawn) A method for making an attachment to a goalie ice skate comprising:

integrally forming a protective shell having first and second opposed side walls and a sole joined by toe and heel portions, the shell defining an interior cavity adapted for receiving a goalie ice skate boot;

unitarily forming a holder as part of the sole of the shell, the holder having an open ended groove extending lengthwise thereover;

forming at least two transversely extending bores in the holder;

positioning a blade received in the open ended groove after the holder has been unitarily formed with respect to the shell, the blade having a blade edge and at least two legs projecting from the blade edge, apertures formed in the legs for alignment with a corresponding number of bores formed in the holder when the blade is mounted in the open ended groove in the holder; and

engaging fasteners through the apertures in the legs of the blade and the bores in the holder to removably affix the blade to the holder.

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APPENDIX B

FINAL REJECTION

DETAILED ACTION

Acknowledgment

1. The amendment filed on 1/22/2004 has been entered.

2. The declaration under 37 CFR 1.132 filed 1/22/2004 is insufficient to overcome the rejection of claims 1-8 and 16-20 based upon the rejected under 35 U.S.C. 103(a) Graf (6,421,934) in view of Reynolds (6,109,622) references as set forth below.

3. It refers only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

4. The declaration showing is not commensurate in scope with the claim. Claim 1 recites "a blade received in the opened groove after the holder has been unitarily formed with respect to the shell". In the declaration, the applicant's argument that the drawing of Graf can only be made by an insert molded process as the shape of the blade prohibits mounting of a separate blade in an open groove in the integral shell/holder after the sheel/holder has been formed. The blade can't not be separate from the shell/holder and mounted in this shell/holder after the shell/holder has been molded. The examiner disagrees, because Graf does not disclose the method of making a skate boot and how to insert the blade to the blade holder. Graf in figure 2 appeared to have an open ended groove to received the blade. The applicant also argues over skate strength that are inherent in replaceable blade skates would have

taught away from forming a goalie skate having heel and toe portion integral with a blade holder. The opinion evidence praising the merits of the claimed invention were found to have little value because of a lack of factual support.

5. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Election/Restrictions

6. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-8, 16-20, drawn to an attachment to a goalie ice skate, classified in class 280, subclass 811.

II. Claims 9-15, 21-22, drawn to method for making an attachment to a goalie skate, classified in class 264, subclass 45.4.

7. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus such as shoe and ice skate.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

9. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

10. Newly submitted claims 21-22 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 21-22 are drawn to an invention of a method of making attachment to a goalie skate as a non-elected species by original presentation.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-15 and 21-22 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1-8 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graf (6,421,934) in view of Reynolds (6,109,622).

Graf in figures 1-2 discloses a skate boot and getting up aid for such a skate boot comprising a protective shell (1) having first and second opposing side walls (4) and a

sole (6) joined by toe and heel portions having a first end and a second end. The shell defined an interior cavity adapted for a receiving a goalie ice skate boot. Graf also discloses a holder unitarily formed as part of the sole of the shell. The holder has an open-ended groove (figure 2) extending lengthwise thereover. Graf also discloses a blade (2) received in the open ended groove after the holder has been unitarily formed with respect to the shell. The blade has a blade edge and at least two legs projecting from the blade edge. Graf fails to show and at least two transversely extending bores formed in the holder, apertures formed in the legs and fasteners engagable through the apertures in the legs of the blade and the bores in the holder to removably affix the blade to the holder.

Reynolds in figure 2 teaches an ice skate chassis comprising a holder (1), a blade (79) and fasteners (65). The holder has at least two transversely extending bores (50, 51) formed in the holder. The blade has apertures (70, 71) in legs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate boot and getting up aid for such a skate boot of Graf with the ice skate chassis having at least two transverse bores, apertures and fasteners as taught by Reynolds in order to increase the force opposing deformation of the blade given by the transverse force.

Regarding claim 2, Graf discloses the open-ended groove, which is integrally formed with respect to the toe and heel portions and releasibly engages the blade.

Regarding claim 3, Reynolds discloses the corresponding number of bores (50, 51), which are integrally formed with respect to toe and heel portions (5, 7).

Regarding claims 4-5, Graf discloses at least one slot (figure 1) for receiving at least one lateral support defined by the holder. Wherein the at least one slot is integrally formed with respect to the toe and heel portions.

Regarding claim 6, Graf discloses the first sidewall defines a low profile in at least a central portion of the skate and with corresponding number of bores from Reynolds into the sidewall of Graf. The corresponding numbers of bore are integrally formed with respect to the low profiled of the first opposed sidewall.

Regarding claim 7, Graf discloses the second sidewall defines an ankle portion rising above an upper extend of the heel portion and with corresponding number of bores from Reynolds into the sidewall of Graf. The corresponding numbers of bore are integrally formed with respect to the ankle portion of the second opposed sidewall.

Regarding claim 8, Graf discloses in figure 1 discloses at least one of the aperture formed in the legs and with the number of aperture from Reynolds. The at least one aperture formed in the legs is offset from a substantially longitudinal axis of the corresponding leg.

Regarding claim 17, Renolds discloses a first bore (50) adjacent the toe portion (5). The sole disposed between and unitarily formed with the first bore and the toe portion. Renolds also discloses a second bore (51) adjacent the heel portion (7). The sole disposed between and unitarily formed with the second bore and the heel portion.

Regarding claim 18, Graf discloses a first opposed side wall extending between the toe portion and the heel portion and defining a low profile in at least a central portion of the first opposed side wall. Graf also discloses a second opposed sidewall extending

between the toe portion and the heel portion and defining an ankle portion rising above an upper extend of the heel portion.

Regarding claim 19, Graf discloses at least one slot in the open ended groove extending along a longitudinal axis of the sole to receive a lateral support defined by a blade received in the open ended groove.

Regarding claim 20, Graf discloses a blade (2) receivable with respect to the open ended groove. The blade includes a blade portion, first and second legs extending substantially transverse to the blade portion. The first leg defined a first projection extending substantially parallel to the blade portion and toward the second leg. The second leg defined a second projection extending substantially parallel to the blade portion and toward the first leg.

13. Claims 1-8 and 16-20 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (4,783,911) in view of Reynolds (6,109,622).

Brown in figures 14-15 discloses a skate boot comprising a protective shell (112) having first and second opposing side walls (126, 124) and a sole (128) joined by toe and heel portions having a first end and a second end. The shell defined an interior cavity adapted for a receiving a goalie ice skate boot. Brown also discloses a holder unitarily formed as part of the sole of the shell. The holder has an open-ended groove (154) extending lengthwise thereover. Borwn also discloses a blade (154) received in the open ended groove after the holder has been unitarily formed with respect to the shell. The blade has a blade edge and at least two legs projecting from the blade edge. Brown fails to show and at least two transversely extending bores formed in the holder,

apertures formed in the legs and fasteners engagable through the apertures in the legs of the blade and the bores in the holder to removably affix the blade to the holder.

Reynolds in figure 2 teaches an ice skate chassis comprising a holder (1), a blade (79) and fasteners (65). The holder has at least two transversely extending bores (50, 51) formed in the holder. The blade has apertures (70, 71) in legs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate boot and getting up aid for such a skate boot of Brown with the ice skate chassis having at least two transverse bores, apertures and fasteners as taught by Reynolds in order to increase the force opposing deformation of the blade given by the transverse force.

Regarding claim 2, Brown discloses the open-ended groove, which is integrally formed with respect to the toe and heel portions and releasibly engages the blade.

Regarding claims 3 and 17, Reynolds discloses the corresponding number of bores (50, 51), which are integrally formed with respect to toe and heel portions (5, 7).

Regarding claims 4-5 and 19, Reynolds discloses at least one slot (figure 1) for receiving at least one lateral support defined by the holder. Wherein the at least one slot is integrally formed with respect to the toe and heel portions.

Regarding claims 6 and 18, Brown discloses the first sidewall defines a low profile in at least a central portion of the skate and with corresponding number of bores from Reynolds into the sidewall of Brown. The corresponding numbers of bore are integrally formed with respect to the low profiled of the first opposed sidewall.

Regarding claims 7 and 18, Brown discloses the second sidewall defines an ankle portion rising above an upper extend of the heel portion and with corresponding number of bores from Reynolds into the sidewall of Brown. The corresponding numbers of bore are integrally formed with respect to the ankle portion of the second opposed sidewall.

Regarding claim 8, Renolds discloses in figure 1 discloses at least one of the aperture formed in the legs. The at least one aperture formed in the legs is offset from a substantially longitudinal axis of the corresponding leg.

Regarding claim 20, Renolds discloses a blade receivable with respect to the open-ended groove including a blade portion and first and second legs (as shown in figure 2) extending substantially transverse to the blade portion. The first leg defines a first projection extending substantially parallel to the blade portion and toward the second leg. The second leg defines a first projection extending substantially parallel to the blade portion and toward the first leg.

Response to Arguments

14. Applicant's arguments filed 1/22/2004 have been fully considered but they are not persuasive. In response to applicant's arguments that the drawing of Graf can only be made by an insert molded process as the shape of the blade prohibits mounting of a separate blade in an open groove in the integral shell/holder after the sheel/holder has been formed. The blade can't not be separate from the shell/holder and mounted in this shell/holder after the shell/holder has been molded. The examiner disagrees, because

Graf does not disclose the method of making a skate boot and how to insert the blade to the blade holder. Therefore, the explanation base on the drawing can be addressed in many the other ways .

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on 703-308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP

Houghan

3/30/04

HAU PHAN
PATENT EXAMINER

OIPE JC79
JUL 19 2004
PATENT & TRADEMARK OFFICE

APPENDIX C

APPELLANTS' DECLARATION UNDER § 1.132

SUBMITTED JANUARY 20, 2004

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JUL 19 2004
PATENT & TRADEMARK OFFICE

Our Reference: AMI-158-B

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Karl Van Blankenburg & Edward J. Belfour
Serial Number:	09/923,694
Filing Date:	August 7, 2001
Examiner/Art Group Unit:	Phan, Hau Van/3618
Title:	GOALIE SKATE PROTECTIVE SHELL WITH REMOVABLE BLADE

DECLARATION UNDER 37 C.F.R. §1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Karl Van Blankenburg, hereby declare that:

1. I have 22 years experience in the design, development and use of molds for molding plastic parts and have been employed by the American Team, a plastic molding company specializing in manufacturing plastic molded parts for 28 years.

2. I have reviewed U.S. Patent No. 6,109,622 to Reynolds and U.S. Patent No. 6,412,934 to Graf.

3 In my experience in molding plastic parts, specifically including insert molding metal inserts in a plastic part, Graf teaches and can only be made by an insert molding process wherein the metal blade is fixed in a mold cavity prior to closure of the mold cavity and the injection of plastic thereinto. The plastic flows around the undercut notches at the fore and aft ends of the blade of Graf as well as around the smaller notches on opposite sides of a central tab and through an aperture formed in the tab. The only purpose for the notches in the ends of the blade, the tab, and the aperture in the tab is to secure the blade in the integral shell/holder of Graf.

4. Specifically, the drawings of Graf clearly show that Graf can only be made by an insert molded process as the shape of the blade prohibits mounting of a separate blade in an open groove in the integral shell/holder after the shell/holder has been formed. This is due to the inward extending fore and aft ends of the blade adjacent to the notches and the centrally located tab which forms a dove-tail connection with the holder. The blade cannot be separate from the shell/holder and mounted in this shell/holder after the shell/holder has been molded as one end and the central tab cannot be mounted in any preformed mating recess in the holder.

5. Reynolds discloses a conventional blade holder for an ice skate in which tabs on the blade fit into enlargements in an open-ended groove formed in the holder. Laterally extending apertures in the holder receive fasteners which extend through apertures in the blade tabs for releasably securing the blade in the holder.

6. In my experience in the field of plastic molding, the blade holder of Reynolds requires only a straightforward, simple molding process to form the holder, the lateral bores and the open-ended groove. This is due to the relatively flat upper portions of the holder which subsequently engage the bottom of a skate boot. The holder of Reynolds lacks any undercuts in the upper end which would complicate the mold design.

7. My goalie skate protective shell with removeable blade needs a complex molding design which requires unique tooling to form the toe and heel portion integrally with respect to the blade holder.

8. The toe and heel portions of my invention are formed in the mold with moveable inserts. These inserts move away from one another along the longitudinal axis of the sole of the shell when the skate is formed to define the inner surface of the cowling. The moveable inserts move toward one another along the longitudinal axis of the sole after the shell has been formed to separate from the formed cowling. The blade holder is disposed beneath the sole and includes an open ended groove. The open ended groove is also formed by a moveable insert in the mold. The groove-forming insert moves generally perpendicular to the sole of the protective shell after the open ended groove has been formed. Therefore, the movements of the inserts that form the toe and heel portions and the movements of

the groove-forming insert are not parallel or perpendicular to one another. This fact necessitated extensive development of the mold for forming the skate which took approximately six years and cost approximately $250,000.00. All of the prior art patents teach forming a replaceable blade holder as a separate component from the toe and heel portion of the skate cowling or shell.

10. I reviewed the Examiner's stated motivation to combine the Graf and Reynolds patents in which the Examiner states that it would have been obvious to combine the references in order to increase the force opposing deformation of the blade given by the transverse force. Based on my experience in forming hockey skates and with plastic molded parts in general, The Examiner's stated motivation to c combine the fasteners of Reynolds in place of the insert molded blade of Graf is mere speculation as the fasteners in Reynolds are not intended to increase a force opposing deformation of the blade; but merely provide for releasable attachment of the blade to the holder.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

By: Karl Van Bladel

Date: Sept. 12, 2003